IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.256 OF 2001

1. Shri Nilkanth Gangadhar
Sinai Amonkar, aged 75 years,
married, businessman, and
his wife,

2. Smt. Prabhavati Nilconta
Amonkar, major, housewife,
both r/o Betal Niwas,
House No.VPC/366,
at the foot of marutigad,
Kakoda, Goa. .....PETITIONERS.

VERSUS

1. Shri Joao Francisco
Cruz Mendes, aged about
59 years;

2. Smt. Anita Mendes,
w/o Joao Francisco Cruz
Mendes, aged about 53 years,
housewife,

3. Shri Jose Caetanhio Mendes,
aged about 53 years;

4. Smt. Petolina Mendes,
w/o Jose Caetanhio Mendes,
aged about 49 years,

all r/o house no. not known
Near Market, Bepquegal,
Curchorem,Goa.....RESPONDENTS.

Shri R.G. Ramani, Advocate for the Petitioners.

Shri Joseph S. Vaz, Advocate for the Respondents.

CORAM : A.S. AGUIAR,J.

DATED : MARCH 7, 2002.

ORAL ORDER

Heard the learned Advocates.

2. The Order impugned in this Civil Revision Application is the Order dated 11th October,2001 of Civil Judge, Junior Division at Quepem, whereby the Application dated 19-6-2001 filed by the Petitioners herein for holding further inquiry through the Commissioner to locate the plot of the Defendants, has been dismissed. The Application dated 19-6-2001 was an application under Order 26, Rule 10 of the Civil Procedure Code.

3. While dismissing the application, the trial Court observed that the High Court had directed the trial Court to appoint a Commissioner in Civil Revision Application No.37 of 1984 to demarcate the boundaries of the plot. Accordingly, the Commissioner appointed by the trial Court submitted his Report. Further enquiry was held on receiving objections from both the parties under Order 26, Rules 10 and 12 of C.P.C.. It is further observed that at that time, the Petitioners, i.e. the Plaintiffs in the Suit, did not raise

the question that the site plan of the house of the Respondents was not taken into consideration by the Commissioner for giving his opinion. In the impugned Order, the Court held that the Application filed by the Plaintiffs was for re-examination of the Commissioner and the same could not be allowed as an earlier application for re-examination of the Commissioner had already been dismissed. Further that the Court had permitted both the parties to cross-examine the Commissioner.

4. Permitting the said Application, which ostensibly is for holding a fresh enquiry, would in fact, tantamount to permitting further cross-examination or re-examination of the Commissioner in respect of the Report already filed by him. By rejection of the Application for fresh enquiry, no prejudice is caused to the Applicants/Petitioners since the Petitioners are free to adduce all relevant documents and evidence before the trial Court including the site plan referred to above.

5. Hence I see no reason to interfere with the impugned Order. Application rejected.

6. With the above Order, the Petition stands disposed of. The trial Court to dispose of the suit as expeditiously as possible.

(A.S. AGUIAR)
JUDGE.

ac.